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L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05

SS-15 STR-07 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02

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R 130005Z MAY 78

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC 0212

INFO USMISSION GENEVA

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AMCONSUL SAO PAULO

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GENEVA FOR MTN

EO 11652: N/A

TAGS: ETRD, MTN, BR

SUBJECT: U.S.-BRAZIL SUB-GROUP ON TRADE (FINAL SESSION,
AFTERNOON, MAY 9) - REVISED AND FINAL VERSION

1. SUMMARY. FINAL SESSION OF BRAZIL-U.S. SUB-GROUP ON
TRADE WAS DEVOTED TO DISCUSSION OF CODES ON CUSTOMS
VALUATION, GOVERNMENT PROCUREMENT (INCLUDING IMPACT OF
GOB LAW OF SIMILARS IN THIS AREA), LICENSING, AND
SAFEGUARDS. BRAZILIANS SHOWED LITTLE INCLINATION TO
CHANGE ANY OF THEIR CURRENT PRACTICES AND ARGUED FOR
EXTENSIVE LDC DEROGATIONS FROM CODE OBLIGA-
TIONS AND ARGUED FOR EXTENSIVE S&D TREATMENT FOR LDCS.

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U.S. CONTINUALLY STRESSED NEED FOR ACTIVE BRAZIL PAR-
TICIPATION IN CODE FORMULATION. IN CONCLUDING STATEMENTS,
BOTH HEADS OF DELEGATIONS SAID THEY FELT THAT PROGRESS
HAD BEEN MADE DURING SUB-GROUP MEETING AND HOPED THAT
JUNE MEETING IN GENEVA WOULD BE ABLE TO BUILD ON RESULTS
OF THIS MEETING. END SUMMARY.

2. CUSTOMS VALUATION. DISCUSSION ON THIS CODE WAS FAIRLY BRIEF. BARRACLOUGH (STATE/EB) SAID THAT U.S. WAS PREPARED TO NEGOTIATE A REVISED CUSTOMS VALUATION CODE NOTING THAT THIS WOULD INVOLVE SIGNIFICANT CHANGES IN CURRENT U.S. PRACTICE. HARTZELL (USMTN) REQUESTED BRAZILIAN COMMENTS ON DRAFT CODE AND NOTED THAT BRAZILIANS HAD BEEN PARTICULARLY SILENT IN THIS CODE IN GENEVA. BARTHEL ROSA (BRAZ. DELEGATION FROM GENEVA) REPLIED THAT BRAZIL HAD LOOKED CAREFULLY AT THE DRAFT CODE, AND ASKED NEVES (GOB FINMIN) TO DISCUSS BRAZILIAN REACTION. NEVES' EXPOSITION CONCENTRATED ON TECHNICAL ASPECTS OF ARTICLES 1, 3, AND 6 OF THE DRAFT CODE. HE SAID THAT ARTICLE 1 WAS "NECESSARY BUT NOT SUFFICIENT," AND URGED THAT CONDITIONS BE GENERALIZED. HARTZELL COMMENTED THAT WE HAD RAISED THIS ISSUE WITH THE EC. NEVES ALSO FELT THAT ARTICLE 6 WAS TOO GENERAL; DISCOUNTS AND ALLOWANCES SHOULD BE ENUMERATED RATHER THAN REMAIN AT THE LEVEL OF A GENERAL PRINCIPLE. ON ARTICLE 3 NEVES FELT THAT THE "CONCEPT OF SIMILARS" SHOULD APPLY ONLY TO GOODS OF THE SAME ORIGIN. IN A FINAL COMMENT, NEVES SAID THAT CUSTOMS VALUATION CODE MUST NOT INTERFERE WITH BRAZIL'S IMPORT REFERENCE PRICE SYSTEM.

3. GOVERNMENT PROCUREMENT. AMB. WOLFF SKETCHED BASIC U.S. POSITION ON THIS CODE. HE BEGAN BY SAYING THAT PRESSURES FOR RESTRICTIONS IN USG PROCUREMENT WERE LIMITED OFFICIAL USE

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INCREASING. HE NOTED THAT WHILE USG WOULD LIKE TO COUNTER THIS TENDENCY, SUCH ARGUMENTS HAVE LITTLE WEIGHT AS LONG AS FOREIGN GOVERNMENT PROCUREMENT IS INCREASINGLY BEING CLOSED TO U.S. FIRMS. HE SAID THAT RESTRICTIONS ON GOVERNMENT PROCUREMENT WERE IN FACT HIDDEN SUBSIDIES FOR DOMESTIC INDUSTRY. REGARDING THE CODE ITSELF, AMB. WOLFF STRESSED THAT U.S. FELT THAT CODE SHOULD APPLY ONLY TO SIGNATORIES, BUT THAT S&D WOULD PERHAPS BE EASIER TO SPECIFY HERE THAN IN OTHER CODES.

4. MEDEIROS (GOB FONMIN) BEGAN BY SAYING THAT BRAZIL WAS STILL EXAMINING THIS CODE AND THAT BRAZIL'S POSITION WAS STILL PRELIMINARY. HOWEVER, HE LATER INDICATED THAT BRAZIL'S INTEREST IN THIS CODE WAS MARGINAL SINCE BRAZIL DID NOT UNDERSTAND WHAT BENEFITS IT WOULD PROVIDE TO BRAZIL. HE ARGUED THAT BY ACCEPTING CODE IN CURRENT FORM BRAZIL WOULD BE OPENING ITS MARKET TO FOREIGN (LARGELY DC) SUPPLIERS BUT THAT ITS ABILITY TO COMPETE EFFECTIVELY IN DC MARKETS WOULD NOT BE ENHANCED SINCE DCS LARGELY BUY FROM OTHER DCS. HE SAID THAT BRAZIL THEREFORE WOULD HAVE GREAT DIFFICULTIES IN ACCEPTING CODE OBLIGATIONS UNLESS LDCS RECEIVED SUFFICIENT S&D. IN PARTICULAR HE INDI-

CATED THAT BRAZIL WOULD NOT ACCEPT A FLAT OBLIGATION CALLED FOR UNDER ARTICLE 1 (A) AND (B) OF DRAFT CODE REGARDING NON-DISCRIMINATION IN GOVERNMENT PROCUREMENT. UPON QUESTIONING FROM HARTZELL AND LANDE (STR), MADEIROS DEFENDED S&D FOR LDC GOVERNMENT PROCUREMENT BECAUSE LDC GOVERNMENT PROCUREMENT WAS "QUALITATIVELY DIFFERENT" FROM DC PROCUREMENT, AND BRAZIL WOULD NOT GIVE UP ITS "INDISPENSABLE FREEDOM" TO DIRECT ITS PROCUREMENTS FOR MAJOR DEVELOPMENT PROJECTS ON SUBJECTIVE GROUNDS. MONTGOMERY (USDOC) COMMENTED THAT BRAZIL'S CONCERNS MIGHT BE MET THROUGH CODE SPECIFICATIONS. LANDE SAID THAT U.S. WAS WILLING TO CONSIDER SOME LESSER LEVEL OF LDC OBLIGATIONS CONCERNING NATIONAL TREATMENT FOR A LIMITED PERIOD OF

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TIME, BUT EXPRESSED CONCERN REGARDING DISCRIMINATION AMONG FOREIGN SUPPLIERS.

5. MEDEIROS INDICATED THAT BRAZIL WAS UNWILLING TO MOVE FORWARD WITH THIS CODE UNTIL SHAPE OF S&D OFFERED IN THIS AREA BECAME CLEARER. U.S. ADMITTED THAT CODE NEGOTIATION STILL HAD MAJOR PROBLEMS TO BE WORKED OUT, ESPECIALLY WITH EC REGARDING CODE COVERAGE, BUT URGED BRAZIL TO PARTICIPATE MORE ACTIVELY IN CODE NEGOTIATIONS

SO THAT BRAZIL HAD SOME IMPACT ON CODE EVOLUTION AND WAS NOT PRESENTED WITH A FAIT ACCOMPLI AT A LATER DATE OR DID NOT END UP IN A SITUATION WHERE BRAZIL DID NOT JOIN THE CODE AND DID NOT PARTICIPATE IN ITS EVOLUTION.

6. LAW OF SIMILARS. FOLLOWING DISCUSSION ON THE GOVERNMENT PROCUREMENT CODE, USDEL INITIATED DISCUSSION OF THE LIMITED OFFICIAL USE

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GOB LAW OF SIMILARS, POSTPONED FROM THE PREVIOUS AFTERNOON'S SESSION ON IMPORT LICENSES AS NON-TARIFF MEASURES BECAUSE OF ITS APPLICABILITY ONLY TO GOVERNMENT PROCUREMENT. SMITH (EMBASSY COMMERCIAL COUNSELOR) STATED U.S. IMPRESSION THAT THE LAW OF SIMILARS REQUIRED GOB TO BUY A DOMESTICALLY-PRODUCED ITEM IN ALL CASES WHEN SUCH AN ITEM WAS AVAILABLE, REGARDLESS OF ITS PRICE VIS A VIS AN IMPORTED ITEM. CURY (GOB FINMIN) COUNTERED BY SAYING THAT LAW OF SIMILARS ONLY APPLIED WHEN POTENTIAL IMPORTS WERE SUBJECT TO GOB INCENTIVES. SMITH REPLIED THAT HE UNDERSTOOD THAT MOST GOB IMPORTS WERE SUBJECT TO INCENTIVES, AND THEREFORE LAW OF SIMILARS HAD WIDE APPLICABILITY. CURY, IN UNCONVINCING REBUTTAL, DENIED THAT SUCH WAS THE CASE. LANDE EXPRESSED U.S. CONCERN OVER THE OPEN-ENDED NATURE OF THE LAW OF SIMILARS AND OTHER SIMILAR BRAZILIAN MEASURES, AND ASKED WHETHER ANY GUIDELINES CONCERNING THE COVERAGE OF THE LAW OF SIMILARS HAD BEEN PUBLISHED. CURY REPLIED THAT THE DECREE ESTABLISHING THE LAW OF SIMILARS WAS GENERAL AND THAT ONLY EXCEPTIONS WERE SUBJECT TO SPECIAL DECREES. (FYI: OIL EXPLORATION AND PRODUCTION EQUIPMENT AND EQUIPMENT FOR BRAZIL'S NUCLEAR PROGRAM HAVE REPORTEDLY BEEN SUBJECT TO EXEMPTIONS FROM THE LAW OF SIMILARS.) LANDE ASKED THAT SMITH OBTAIN FROM CURY RELEVANT LEGISLATION AND INTERPRETATIONS SO THAT U.S. EXPORTERS COULD BE INFORMED, AND HE SAID THAT THE AVAILABILITY OF THIS INFORMATION COULD BE HELPFUL TO U.S. EXPORTERS IN DETERMINING WHERE EXPORT OPPORTUNITIES EXISTED.

7. LICENSING. DISCUSSION WAS RELATIVELY BRIEF. MONTGOMERY DESCRIBED THE TWO LICENSING CODES, ONE REFERRING TO AUTOMATIC (THOSE UTILIZED STRICTLY FOR STATISTICAL PURPOSES) LICENSING, AND THE OTHER TO LICENSING USED TO LIMITED OFFICIAL USE

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ADMINISTER IMPORT RESTRICTIONS. HARTZELL SAID THAT U.S. REGARDED MAINTENANCE OF LICENSING SYSTEM FOR SURVEILLANCE

OR MONITORING OF IMPORTS AS A LEGITIMATE BASE FOR AUTOMATIC LICENSING ONLY IN CONNECTION WITH SAFEGUARDS. MONTGOMERY, NOTING BRAZIL'S AFFIRMATIONS DURING THE PREVIOUS AFTERNOON'S SESSION THAT THEIR IMPORT LICENSES (EXCEPT IN CERTAIN SECTORS AND IN CONNECTION WITH BOP RESTRICTIONS) WERE AUTOMATIC, SAID U.S. WAS CONCERNED ONLY ABOUT DELAYS THAT U.S. EXPORTERS HAD EXPERIENCED IN GETTING LICENSES, ESPECIALLY IN DUTY EXEMPTION CASES. HUGUENEY (GOB FONMIN) ASKED THAT SPECIFIC DELAY PROBLEMS BE BROUGHT TO BRAZIL'S ATTENTION FOR DISCUSSION AT A LATER TIME. IN GENERAL REMARKS, HUGUENEY SAID THAT BRAZIL WAS NOT PREPARED TO DISCUSS THE PHASE-OUT OF ITS IMPORT LICENSE SYSTEM, WHICH BRAZIL REGARDED AS ESSENTIAL FOR STATISTICAL PURPOSES. HE SAID THAT BRAZIL WAS PREPARED TO DISCUSS RULES ON TRANSPARENCY, NON-DISCRIMINATION, DELAYS, AND FINES AND PENALTIES. BARTHEL ROSA COMMENTED THAT GOB EXPERTS ARE STUDYING THIS CODE WITH A VIEW TOWARD ENGAGING IN DISCUSSION "IF POSSIBLE." LANDE POINTED OUT THAT THIS WAS AN AREA WHERE IT WAS HARD TO ADD UP THE OBLIGATIONS AND BENEFITS, BUT HE URGED BRAZILIAN PARTICIPATION. HE ALSO POINTED OUT THAT DURING PRODUCT SPECIFIC DISCUSSIONS, BRAZIL HAD PROMISED MOVEMENT IN THIS AREA.

8. SAFEGUARDS. BARTHEL ROSA BEGAN BY STATING THAT THE SAFEGUARDS CODE WAS IMPORTANT FOR THE ENTIRE MTN AND WAS ONE OF BRAZIL'S HIGHEST MTN PRIORITIES. HE STATED THAT BRAZIL'S PRIMARY OBJECTIVE IN THIS CODE WAS TO ASSURE THAT LDCS RECEIVED GREATER FLEXIBILITY REGARDING ANY OBLIGATIONS THEY ASSUMED UNDER ANY SAFEGUARDS CODE. HE NOTED THAT BRAZIL'S CONCERNS MIGHT ALSO BE ADDRESSED AS PART OF A REVISED ARTICLE XVIII. HE SAID THAT BRAZIL DID NOT HAVE CONCRETE PROPOSALS TO MAKE AT THIS TIME SINCE

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BRAZIL WANTED TO HAVE AN IDEA ON THE SHAPE THE SAFEGUARDS CODE WAS ASSUMING BEFORE MAKING DEFINITIVE SUGGESTIONS. IN GENERAL BRAZIL WOULD INSIST THAT THE CODE INCLUDE A CLAUSE ENABLING LDCS TO TAKE PROTECTIVE ACTION ON GROUNDS OTHER THAN THE SERIOUS INJURY. HE SAID THAT FOR INSTANCE LDCS SHOULD BE ABLE TO TAKE SAFEGUARD ACTIONS ON WIDER GROUNDS RELATED TO DEVELOPMENT NEEDS (INCLUDING INFANT INDUSTRIES) OR TO REFLECT THE EVOLUTION OF ITS ECONOMY. HE ALSO SAID THAT LDCS SHOULD HAVE MORE FLEXIBILITY REGARDING TIME LIMITS FOR THE APPLICATION OF SAFEGUARDS. HARTZELL INDICATED THAT WHILE THE LATTER CONCERN COULD BE ADDRESSED UNDER THE SAFEGUARDS CODE, THE SERIOUS INJURY TEST WOULD CONTINUE TO BE THE BASIS FOR ANY ACTION TAKEN.

9. MORE GENERALLY, HARTZELL SAID THAT IN U.S. VIEW BRAZIL ALREADY HAD SIGNIFICANT FLEXIBILITY UNDER GATT AND LIMITED OFFICIAL USE

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THAT IT WAS UNCLEAR HOW BRAZIL'S PROPOSALS IN THIS AREA DIFFERED FROM ARTICLE 18. LANDE COMMENTED THAT BRAZIL'S ZEAL FOR LDC FLEXIBILITY IN SAFEGUARDS AREA COULD INFLUENCE SOME DCS INTO ARGUING FOR LESSER DC OBLIGATIONS. IF, HOWEVER, BRAZIL AGREED TO BIND ITS TARIFF SCHEDULE, THERE COULD BE POSSIBILITY FOR ALLOWING BRAZIL MORE FLEXIBILITY IN TAKING TEMPORARY ACTION TO ENCOURAGE NEW INDUSTRIES.

10. CONCLUDING REMARKS. IN HIS CONCLUDING REMARKS, PROENCA ROSA (GOB FONMIN, DEL. HEAD) ASSESSED THE MEETING AS "VERY FRUITFUL AND POSITIVE," ESPECIALLY IN REGARD TO LAYING GROUNDWORK FOR JUNE AND JULY MEETINGS IN GENEVA. AMB. WOLFF SAID HE LEFT THE TALKS "VERY MUCH ENCOURAGED," AND BELIEVED PROGRESS WAS POSSIBLE. THOMPSON

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